IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.20397 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
&
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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KIRANKUMAR HARIHAR OZA & ORS. - Petitioners
Versus
STATE OF GUJARAT & ORS. - Respondents

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Appearance :
MR NILESH PANDYA with MR VIJAY N RAVAL for Petitioners.
MR LR PUJARI, AGP for Respondent No.1.
MR RM CHHAYA for Respondent No.2.
NOTICE SERVED for Respondent Nos.3 & 4.
NOTICE SERVED BY DS for Respondent Nos.3 & 4.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 09/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

By filing the instant petition under Article 226 of the Constitution, the petitioners initially

prayed to issue a writ of mandamus or any other appropriate writ or order to quash notification issued under Section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short), which was published in local newspaper on December 29, 2004. The record shows that, in fact, notification under Section 4(1) of the Act issued by the appropriate Government under Section 4(1) of the Act, was published in the official gazette on November 23, 2004 as the lands specified in the schedule thereto were likely to be need by the Government for public purpose, but the said notification was also published in the local newspaper on December 29, 2004 as required by law and, therefore, above mentioned relief was claimed by the petitioners. The record further shows that notification published in the official gazette on November 23, 2004 was subsequently cancelled by another notification dated August 3, 2006 after which the State Government has issued fresh notification under Section 4(1) of the Act, which is published in the official gazetted on August 3, 2006 mentioning, *inter alia*, that the lands specified in the schedule thereto are needed for the public purpose by Gujarat Industrial Development Corporation (G.I.D.C.) to construct a bye-pass road near Sarigam Village and those lands are likely to be needed for the said public purpose. In view of the publication of fresh notification under Section 4(1) of the Act in the official gazette on August 3, 2006, the petitioners had moved a draft amendment to permit them to challenge the validity of the said notification. The

said draft amendment was granted on October 4, 2006 and now, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ or order to quash the notification issued under Section 4(1) of the Act, which is published in the official gazette on August 3, 2006.

2. The petitioners are the owners of the lands situated at Village: Sarigam, Taluka: Bonpada, District: Valsad. According to them, they are cultivating the lands belonging to them. From the record of the case, it is evident that near Sarigam Village, the lands were acquired by the respondents for the purpose of establishing industrial area. At that time, no bye-pass road was provided by the G.I.D.C. Subsequently, the G.I.D.C. proposed a bye-pass road so that Sarigam G.I.D.C. could be approached directly. The residents of Village Sarigam felt that construction of bye-pass road as suggested by the G.I.D.C. would affect a large number of agriculturists as well as residents of the village and, therefore, a resolution was passed to object the proposal moved by the G.I.D.C. to provide the said road. The record of the petition would show that the petitioners and other villagers had suggested another alternative way to the respondents. From the affidavit-in-reply filed by the G.I.D.C., it is evident that the bye-pass road proposed is going to be funded by the Central Government. As the bye-pass road suggested by the G.I.D.C. was opposed by the village people, no steps were taken by the

appropriate Government for acquiring the lands, but after taking into consideration the facts of the case and need pointed out by the G.I.D.C., the State Government had issued notification under Section 4(1) of the Act, which was published in the official gazette on November 23, 2004, as the State Government was satisfied that the lands specified in the schedule thereto were likely to be needed for the public purpose of providing bye-pass road as suggested by the G.I.G.C. It may be mentioned that the State Government was satisfied in terms of Section 17(4) of the Act that the provisions of subsection (1) of Section 17 of the Act were applicable to the facts of the case and, therefore, the Government had directed that the provisions of Section 5-A of the Act shall not apply while publishing notification under Section 4(1) of the Act, which was published in the official gazette on November 23, 2004. The said notification was also published in the newspaper circulating in the area on December 29, 2004. On publication of the said notification in the newspaper, an agitation had taken place and the petitioners had raised their objections. It may be mentioned that one Mr.Prakash B. Arekar, who is Sarpanch of Sarigam Village, had discussed the problems with the governmental authorities on August 3, 2005 and addressed a letter to Mr.Bharat Raval, General Manager, G.I.D.C., Udyog Bhavan, Gandhinagar, stating, *inter alia*, that the village people had no objection if bye-pass road as suggested by the G.I.D.C. was provided, but the

alternative way suggested by the people should be considered and care should be taken to see that the minimum extent of lands were acquired to avoid loss to the village people. In view of the said representation made on behalf of the village people by the Ex-Sarpanch of the Village as well as other objections, the matter was reconsidered by the respondents and in order to see that more lands than what was necessary, were not acquired, the notification dated November 23, 2004 was cancelled by the Government by notification dated August 3, 2006 and, thereafter, another notification under Section 4(1) of the Act was issued, which was published in the official gazette on August 3, 2006 applying the urgency clause. The issuance of notification under Section 4(1) of the Act in the official gazette on August 3, 2006 with urgency clause, has given rise to the instant petition.

3. On service of notice, an affidavit-in-reply was filed by Mr.Tulshibhai K. Pandor, who is Divisional Manager of the respondent No.2, controverting the averments made in the petition. After the petitioners were granted permission to amend the petition, Mr.Pandor has filed another affidavit-in-reply controverting the averments made in the amended petition. In the reply, it is, *inter alia*, stated that it is eminent and urgent to lay down and construct a bye-pass near Sarigam Village for ingress and egress to Sarigam Industrial Estate and, therefore, the State Government has issued

notification under Section 4(1) of the Act read with Section 17(1) of the Act, which cannot be termed as illegal. What is mentioned in the reply is that the construction of the said bye-pass is necessary in order to avoid traffic hazards and the accidents which occur wherein even the small school children are affected and that pursuant to earlier publication of notification issued under Section 4(1) of the Act in the official gazette on November 23, 2004, his office had made as many as forty-one attempts to sort out the differences between the parties, but because of non-cooperation on the part of the landowners, the proceedings could not be completed and, therefore, the prayer made in the petition should not be granted. It is mentioned in the reply that by notification dated August 3, 2006, the extent of the area, which is now under acquisition, is H6-29-95 sq. mtrs., which indicates that the respondents had examined the whole issue again and planned to realign the bye-pass road as a result of which, invocation of urgency clause cannot be regarded as illegal. It is mentioned in the reply that the State Government has made declaration as contemplated by Section 6 of the Act, which is published in the official gazette on August 29, 2006 and as there was some typographical error, an erratum was issued, which was published in the official gazette on September 30, 2006 and in view of the facts and circumstances of the case, it is wrong to contend that the Government was not justified in invoking urgency clause. What is emphasised in the reply is that after full

application of mind and scrupulously following the due process of law, the lands in question are acquired for public purpose and, therefore, the petitioners are not entitled to the reliefs claimed in the petition. It is also mentioned in the reply that under one pretext or the other, the petitioners and other similarly situated persons have made attempts to delay the proceedings and, therefore, challenge to the notification published under Section 4(1) of the Act for providing bye-pass road to the Industrial Estate established by the respondent No.1 should not be entertained.

The petitioners have filed rejoinder reiterating what is stated in the petition.

4. It may be mentioned that as observed earlier, the petition was permitted to be amended on October 4, 2006 and, therefore, Mr.L.R.Pujari, the learned Assistant Government Pleader, requested the Court to adjourn the matter beyond *Diwali Vacation* to enable the State Government to file affidavit-in-reply, but Mr.Nilesh Pandya, learned advocate for the petitioners, strongly objected the said motion and pleaded that if the Court was inclined to grant time as prayed for by the learned Assistant Government Pleader, stay of further acquisition proceedings should be granted to the petitioners. The Court was not inclined to grant stay of acquisition proceedings at all in view of the decision in ***Ramniklal N. Bhutta vs. State of Maharashtra, (1997) 1 SCC 134*** whereas

necessary facts have been brought on record of the case, by the acquiring body by filing two replies. Under the circumstances, to see that the petitioners are not prejudiced, the petition is taken up for disposal to-day as insisted upon by the learned counsel for the petitioner.

5. The only contention raised by the learned counsel for the petitioners is that notification under Section 4(1) of the Act, which was published in the official gazette on November 23, 2004 with urgency clause, was cancelled by the Government on August 3, 2006 during which period, no steps worth the name were taken for the purpose of acquiring the lands and, therefore, appropriate Government was not justified in issuing another notification under Section 4(1) of the Act, which was published in the official gazette on August 3, 2006 to acquire the lands in question by invoking the urgency clause and, therefore, the relief claimed in the petition should be granted. It was argued that the record does not show that the Government had formed necessary satisfaction as required by Section 17(4) of the Act and as fundamental right of the petitioner to lodge objections under Section 5-A of the Act is sought to be adversely affected, the notification impugned in the petition should be set aside. What was maintained by the learned counsel for the petitioners was that the material on record does not indicate that the appropriate Government had applied mind before invoking urgency clause as contemplated by Section

17(4) of the Act and, therefore, the prayer made in the petition should be granted. In support of these submissions, the learned counsel for the petitioners relied upon the decision in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai and others, 2005 AIR SCW 4796.

6. Mr.R.M.Chhaya, learned counsel for the respondent No.2, contended that after considering the relevant materials on the record including earlier notification, which was published in the official gazette on November 23, 2004, the Government has issued notification on August 3, 2006 invoking the urgency clause, which cannot be termed as illegal at all and, therefore, the petition should not be entertained. What was stressed on behalf of the respondent No.2 was that the bye-pass road, which is funded by the Central Government, could not be provided because of unreasonable attitude taken by the petitioners and other villagers and as it was likely to affect adversely the village people, the Government has applied urgency clause, which cannot be termed as illegal. According to the learned counsel for the respondent No.2, the lands specified in the schedule to the notification dated August 3, 2006 are needed for public purpose and, therefore, the instant petition should be dismissed.

7. Mr.L.R.Pujari, learned Assistant Government Pleader for the respondent No.1, contended that the facts justifying the invocation of urgency clause are

evident from the record of the case and, therefore, it is wrong to contend that without application of mind, the Government has invoked urgency clause for the purpose of acquiring the lands in question. It was argued that bye-pass road sought to be provided is for public purpose and having regard to the facts of the instant case, the petition should not be entertained. In support of these submissions, the learned Assistant Government Pleader relied on the decision in First Land Acquisition Officer v. Nirodhi Prakash Gangoli and Anr. AIR 2002 SC 1314.

8. This Court has heard Mr.Nilesh Pandya, learned counsel for the petitioners, as well as Mr.L.R.Pujari, learned Assistant Government Pleader for the respondent No.1, and Mr.R.M.Chhaya, learned counsel for the respondent No.2. This Court has also considered the documents forming part of the petition.

9. On consideration of the rival submissions of the parties, this Court is of the opinion that the question of urgency of an acquisition under Section 17(1) & 17(4) of the Act is the matter of subjective satisfaction of the State Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In **First Land Acquisition Collector & Ors. vs. Nirodhi Prakash Gangoli & Anr., A.I.R. 2002 SC 1314**, the Supreme Court has held that when the Government takes a decision, taking all

relevant considerations into account and is satisfied that there exists emergency for invoking powers under Section 17(1) & (4) of the Act and issues notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority *mala fide*. Applying the ratio laid down by the Supreme Court to the facts of the instant case, this Court finds that notification issued under Section 4(1) of the Act, which is published in the official gazette on August 3, 2006, is not challenged on the ground of *mala fide*. Whether in a given situation there existed urgency or not, is left to the discretion and decision of the concerned authorities. The record shows that before invoking power under Section 17(4) of the Act, necessary and relevant materials were placed before the State Government, which is quite evident from the contents of the affidavit-in-reply filed on behalf of the acquiring body. From the affidavit-in-reply filed on November 22, 2005 on behalf of the acquiring body, it is evident that taking into consideration the overall development of full-fledged Industrial Estate established at Sarigram, the density of traffic and special loan of Rs. 2 Crores sanctioned by the Central Government, which was to be utilised before March, 2006, the G.I.D.C. had conducted an initial survey to carve out a road for easy access and movement of the increased vehicular traffic for

independent ingress and egress from the Sarigram Industrial Etate and proposed to the State Government to acquire the lands in question and invoke urgency clause. After considering traffic hazards etc. the Government had issued notification under Section 4(1) of the Act, which was initially published in the Official Gazette on November 23, 2004 and invoked urgency clause. However, the petitioners and villagers had resorted to agitation as a result of which, further steps could not be taken by the State Government in the matter of acquiring the lands. What is relevant to notice is that in view of the representation made by the Sarpanch of the village, the Government has considerably reduced the extent of the lands to be acquired including the extent of lands of the petitioners. The proposal to acquire the lands which was moved by G.I.D.C. in the year 2002 could not be materialised because of the adamant attitude of the petitioners and others and, therefore, not taking of steps during the interregnum period would not indicate that the satisfaction of the Government to invoke urgency clause is bad in law, or that the Government has not applied its mind to the relevant facts before invoking urgency clause. Under the circumstances, it is wrong to contend that the State Government had invoked urgency clause under Section 17(1) and (4) of the Act without application of mind. Further, the document, which is produced at Annexure-F to the petition, makes it very clear that village people had no objection if bye-pass road was provided, but their only proposal was that as far as

possible less extent of lands should be acquired and that alternative way suggested by them should be considered. On the facts and in the circumstances of the case, this Court is of the opinion that the decision of the State Government dispensing with the inquiry under Section 5-A of the Act by invoking powers under Section 17(1) r.w.Section 17(4) of the Act would not invalidate the notification issued under Section 4(1) of the Act, which is published in the official gazette on August 3, 2006. It is true that the conclusion of the Government that there was urgency cannot be conclusive but, there is no manner of doubt that the said conclusion is entitled to great weight, as has been held by the Supreme Court in ***Jage Ram vs. The State of Haryana, A.I.R. 1971 SC 1033***. Section 17(1) of the Act begins with the words "in cases of urgency" which expression is not defined by the Act. The appropriate Government is the sole arbiter of the question whether or not the case is of urgency. The opinion of the Government in regard to the existence of urgency is truly subjective and the Court cannot normally inquire whether or not there were sufficient grounds for forming opinion under Section 17(4) of the Act. It is not just the existence of urgency, but, the need to dispense with an inquiry under section 5-A which has to be considered. Once the Court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material fact before it, on which it could reasonably base its conclusion, the Courts should not and would not interfere.

Further, an order or notification containing a recital technically correct on the face of it, raises a presumption of fact under Section 114, Illustration (e) of the Evidence Act unless it is displaced by circumstances indicating that the power lodged in an authority or official has not been exercised in accordance with law. Under the principle of general burdens embodied in Sections 101 and 102 of the Evidence Act, it is for the petitioners to substantiate the grounds of their challenge which they can do either by leading evidence or by showing that some evidence has come from the side of the respondents to show that their challenge to the notification is made good. The recital about urgency though not conclusive, places the burden on the petitioners to prove that it is wrong. The petitioners in the instant case have failed to adduce any cogent and reliable material before this Court to indicate that the Government had not applied its mind before invoking urgency clause and therefore, the petition must fail. The contents of the two affidavits filed by the acquiring body would indicate that the very purpose of the acquisition of the lands in question would be frustrated if the lands are not urgently acquired and, therefore, dispensation of inquiry under Section 5-A of the Act cannot be regarded as illegal. In Hindustan Petroleum Corporation Ltd. (supra), which is relied on by the learned counsel for the petitioners, acquisition proceedings were initiated at the instance of the appellant against whom decree of eviction was passed

in the proceedings instituted by the first respondent. The acquisition proceedings were challenged by the first respondent and writ petition was allowed by the High Cort of Andhra Pradesh. The question considered by the Supreme Court was whether the Government had considered the objections of the land-owner raised before Collector in inquiry under section 5-A and applied its mind before accepting the recommendations of Collector. While considering the said question, it is held that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300A, the right under Section 5-A is akin to a fundamental right. In the said case, it could not be established that the State had applied its mind to the objections filed by the owner of the land or to the report of Collector upon making other and further inquiries therefor as also the recommendations made by him in that behalf and, therefore, judgment of the High Court was upheld. Here in this case, no inquiry under section 5-A is held, but, on the contrary, it is dispensed with. Further, as observed earlier, application of mind by the Government before invoking urgency clause is quite evident. Under the circumstances, the petitioners are not entitled to any relief on the basis of principle laid down in Hindustan Petroleum Corporation Ltd.(Supra). On the facts and in the circumstances of the case, this Court is of the opinion that no ground is made out by the petitioners for grant of reliefs claimed in the petition and, therefore, the petition is liable to be

dismissed.

For the foregoing reasons, the petition fails and is dismissed. Notice is discharged. There shall be no orders as to costs.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra